

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA

KATHERINE L. YOST,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. CIV-06-1130-C
	)	
STONEBRIDGE LIFE INSURANCE	)	
COMPANY,	)	
	)	
Defendant.	)	

**MEMORANDUM OPINION AND ORDER**

As part of her Response to Defendant's Motion for Summary Judgment, Plaintiff filed a Cross-Motion for Summary Judgment arguing she is entitled to judgment because she acted in good faith.\* Defendant has filed a Response arguing questions of fact exist regarding Plaintiff and/or her husband's intent to deceive by failing to supplement the insurance application.

Summary judgment is appropriate if the pleadings and affidavits show there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). "[A] motion for summary judgment should be granted only when the moving party has established the absence of any genuine issue as to a material fact." Mustang Fuel Corp. v. Youngstown Sheet & Tube Co., 561 F.2d 202, 204 (10th Cir. 1977). The movant bears the initial burden of demonstrating the absence of material fact

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\* In this regard, Plaintiff's filing violates LCVR 7.2(c) which states: "[a] response to a motion may not also include a motion or a cross-motion made by the responding party." This is not the first time Plaintiff's counsel has run afoul of the Court's rules in this matter. Counsel is strongly encouraged to review the local rules before proceeding further in this matter.

requiring judgment as a matter of law. Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986). A fact is material if it is essential to the proper disposition of the claim. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). If the movant carries this initial burden, the nonmovant must then set forth “specific facts” outside the pleadings and admissible into evidence which would convince a rational trier of fact to find for the nonmovant. Fed. R. Civ. P. 56(e). These specific facts may be shown “by any of the kinds of evidentiary materials listed in Rule 56(c), except the mere pleadings themselves.” Celotex, 477 U.S. at 324. Such evidentiary materials include affidavits, deposition transcripts, or specific exhibits. Thomas v. Wichita Coca-Cola Bottling Co., 968 F.2d 1022, 1024 (10th Cir. 1992). “The burden is not an onerous one for the nonmoving party in each case, but does not at any point shift from the nonmovant to the district court.” Adler v. Wal-Mart Stores, Inc., 144 F.3d 664, 672 (10th Cir. 1998).

Defendant argues that Mr. Yost allegedly completed and mailed the insurance application on April 5, 2002, yet it was not received by Defendant for 11 days. In contrast, the longest period for any other piece of mail sent by Plaintiff or her husband to Defendant arrived in 6 days. Given that Mr. Yost was diagnosed with cancer on April 11, 2002, Defendant argues there is a question of fact regarding when the insurance application was actually completed and whether Mr. Yost knew of his diagnosis before mailing the application. Defendant also notes that the doctor listed by Mr. Yost on the application had not treated Mr. Yost for over six months while Mr. Yost had seen another doctor, who was not

identified, approximately three weeks before completing the application. Thus, Defendant asserts questions of fact remain regarding Mr. Yost and/or Plaintiff's intent to deceive.

The Court finds Defendant's position well taken. As noted in the Order denying Defendant's Motion for Summary Judgment, questions of intent are rarely appropriate for resolution via summary judgment motions. See McKnight v. Kimberly Clark Corp., 149 F.3d 1125, 1129 (10th Cir. 1998) ("Summary judgment is not ordinarily appropriate for settling issues of intent or motivation.") (citing Setliff v. Mem'l Hosp. of Sheridan County, 850 F.2d 1384, 1394 n. 12 (10th Cir. 1988)). The issues raised by Defendant could certainly lead a reasonable jury to find that Plaintiff and/or her husband intended to deceive Defendant by not disclosing a known health condition on the insurance application or in failing to timely supplement that application. Accordingly, Plaintiff's request for judgment on this issue will be denied.

As set forth more fully herein, the Court finds questions of material fact exist which preclude entry of judgment in favor of Plaintiff. Accordingly, Plaintiff's Cross-Motion for Summary Judgment (Dkt. No. 25) is DENIED.

IT IS SO ORDERED this 24th day of May, 2007.

  
ROBIN J. CAUTHRON  
United States District Judge